



THE 17TH ANNUAL ESTATE PLANNING CONFERENCE

Estate Planning in a Shrinking World

Life Tenancies and Rights to Reside

The Death Knell for Gift and Loan Back Arrangements?

Where to Sit Superannuation in the Estate Plan?

Distribution Dilemmas and Taxation in Trusts – an Update

Incremental Control Mechanisms in Testamentary Trusts

Challenging Discretionary Trust Decisions

Intergenerational Family Business Planning

Singling Out Family Members in Estate Planning

Protecting the Bank of Mum and Dad

The Impact of “Ageing and Engaging” on Estate Planning

Keeping a Tight Hold of the Reins in Enduring Powers of Attorney

A Two-day Conference

Thursday 23 & Friday 24 March 2023

Crown Melbourne

Feedback from last year's conference:

- “Excellent informed presenters sharing relevant practice information. A useful update as to current issues in the respective areas.”
- “An impressive two days filled with great content.”
- “My first Annual estates Conferences- so much interesting content - thanks.”
- “Excellent mix of speakers and topics, well organised and took care to finish each session on time.”



Leaders in online CPD for Lawyers & Accountants

DAY 1 - THURSDAY 23 MARCH 2023

MORNING THEME: CREATING CERTAINTY IN THE ESTATE PLAN

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Location, Location: Estate Planning in a Shrinking World

With an increasing number of families having their roots overseas or moving interstate to follow the sun, asset location is becoming a significant issue when it comes to estate planning. This session will look at the challenges, complexities and consequences of planning for the future of assets located outside the domicile of the owner, including:

- Why domicile and residency are integral in estate planning
- Does citizenship impact domicile when it comes to assets overseas?
- Should asset location dictate where a will is made?
- Are moveable assets treated differently to immovable assets?
- Due diligence requirements for assets out of the jurisdiction, including ownership documentation
- Taxation and other consequences for Australian beneficiaries receiving overseas or interstate assets
- The impact of international conventions and treaties on assets outside Australia
- Seeking advice from experts in the asset's jurisdiction
- Cases and examples

Speaker: *Bryan Mitchell, Principal, Mitchells Solicitors, Brisbane*

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: More than a Matter of Housekeeping: Life Tenancies and Rights to Reside

Complex blended family dynamics arising from successive relationships have resulted in the family home becoming a central issue in estate planning. This session will take a deep dive into the risks and benefits of the various options for limited "housekeeping" for the partner left behind, including:

- Types of blended families
- What is adequate provision for a spouse?
- Keeping everyone happy - providing for a current spouse and children from a prior relationship - avoiding challenges
- The fundamental differences between a life tenancy and a right to reside
- What conditions or limitations can be attached to the trust?
- The ongoing role of the executor and trustee
- Tips for taking ageing and health into account - can the property be used to fund aged care?
- When can a property be assumed to have been vacated? Can the life tenant and remaindermen collapse the trust and divide the assets between them?
- Financial and taxation consequences for the estate and life tenant the remaindermen
- Drafting guide
- Worked examples

Speaker: *Paul Evans, Partner, Makinson d'A pice Lawyers, Sydney*

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1 - THURSDAY 23 MARCH 2023

11.25am - 12.10pm

Session 3: The Death Knell for Gift and Loan Back Arrangements in Estate Planning?

Gift and loan back arrangements have been a controversial but popular mechanism in estate planning to re-arrange and protect the assets in an estate and favour specified recipients over others. However, it appears these arrangements may be losing legitimacy. This session will examine the legal and ethical aspects and consider what the future may hold for continued usage, including:

- How do gift and loan back arrangements work?
- Why have people traditionally sought to enter into these arrangements?
- How gift and loan backs have become an additional hurdle in estate litigation
- The elements of a gift and loan back arrangement
- Drafting guidance for key documents
- Financial and taxation benefits and disadvantages of the arrangement
- Limitations and restraints in gift and loan back arrangements
- Risks of claw-back or sham characterisation: *Atia v Nusbaum* [2011] QSC 44; *Re Permewan No 2* [2022] QSC 114
- Does the reasoning in *Re Permewan* represent a new trajectory?
- What can practitioners do to shore up the viability of gift and loan back arrangements? Strategies and alternatives

Speaker: Matthew Burgess, Director, View Legal, Australia

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: Musical Chairs: Where to Sit Superannuation in the Estate Plan?

With superannuation coming in all shapes and sizes, and as an asset outside the personal estate, very real thought about what should happen to it either before or after death is needed in estate planning. This session will highlight some of the key considerations practitioners should have in mind when advising clients, including:

- Death benefit nominations choices and problems
- Is it better to leave it to the estate and, if so, how?
- Benefits and disadvantages of a superannuation proceeds trust and implications
- Tax liability in super distribution and dependency definition issues
- Multi-member superannuation funds in estate planning
- Other strategies including super asset disposal pre-death
- Can superannuation be notional estate in NSW? *Benz v Armstrong*; *Benz v Armstrong*; *Benz v Armstrong* [2022] NSWSC 534
- What should be in the super trust deed for increased flexibility in estate planning?

Speaker: Jennifer Dixon, Principal, Moores, Melbourne

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

DAY 1 - THURSDAY 23 MARCH 2023

AFTERNOON THEME: TRUSTS IN THE ESTATE PLAN

2.15 - 3.00pm

Session 5: Distribution Dilemmas and Taxation in Trusts - an Update

Family and testamentary trust income distribution continues to be a focus of the ATO and is also the subject of an important High Court decision. This session will examine some of these recent developments and explore the options for practitioners to assist clients achieve a more favourable tax outcome in estate planning through trust structures, including:

- An analysis of the ATO package of draft advice and guidelines on trust entitlements and where to from here
- What is the ATO focussing on and why?
- Will the guidelines provide the greater certainty sought?
- The impact of the ATO's views on s100A reimbursement agreements
- The treatment of unpaid entitlements and why management of these may need to change
- The implications of the decision in Commissioner of Taxation v Carter [2022] HCA 10 for trust beneficiaries and consequential trust deed review
- Strategies to minimise risks for beneficiaries and assist in estate planning with greater certainty and benefits.

Speaker: Daniel Smedley, Principal, Sladen Legal, Melbourne

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Let Go from the Get Go? Incremental Control Mechanisms in Testamentary Trusts

The desire to rule the family from the grave through a testamentary trust can be overwhelming but can prove a significant impediment with unintended consequences. This session will explore the stepped options for control of testamentary trust decisions and provide guidance on what practitioners need to consider when advising their clients, including:

- Why a testamentary trust can be attractive to controlling will-makers
- Asset inclusion and management considerations
- When is a capital reserved trust appropriate?
- Trustee selection and powers to achieve desired outcomes
- Determining levels of decision-making from specific to discretionary
- Examples of different levels of trust control and consequential outcomes
- Why effective dispute resolution mechanisms are necessary for tightly controlled trusts
- Drafting guidance and techniques
- Lessons from the courts on testamentary trust failings and risks in "controlling from the grave" cases
- Advising clients on getting the balance right in testamentary trusts.

Speaker: Greg Russo, Partner, Featherbys Lawyers, Victoria

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

DAY 1 - THURSDAY 23 MARCH 2023

4.25 - 5.10pm

Session 7: Not Happy Jan: Challenging Discretionary Trust Decisions

As family trust control starts to move down the food chain from elderly and deceased parents to adult children, the quality of discretionary decision-making has come under increasing review and dissatisfaction, as evidenced by recent cases. This session will take an in-depth look at discretionary trustee decision-making and the role of the courts, including:

- What must a trustee consider in exercising their discretion?
- What are the grounds for challenging a decision?
- Who can challenge the decision and what evidence do they need?
- What access is available to information and documents concerning the decision?
- What is the responsibility and accountability of professional advisers to the trustee?
- What will the courts consider and what remedies are available?
- Should discretionary decision-making be restricted by a trust deed? Tips for drafting limitations
- Recent cases including *Owies & Owies v JJE Nominees Pty Ltd* [2022] VSCA 142; *Cardaci v Filippo Primo Cardaci* as executor of the estate of Marco Antonio Cardaci [2021] WASC 331; *Baba v Sheehan* [2021] NSWCA 58; *Wareham v Marsella* [2020] VSCA 92; *Mandie v Memart Nominees Pty Ltd* [2020] VSCA 281; *Trani v Trani* [2018] VSC 274

Speaker: Ed Skilton, Partner, Sladen Legal, Melbourne

5.10 - 5.20pm Panel Comments and Questions

DAY 2 - FRIDAY 24 MARCH 2023

MORNING THEME: PREVENTING CONFLICT AND MANAGING RELATIONSHIPS

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 8: Preparing for the Long Haul: Intergenerational Family Business Planning

Laying the groundwork for an intended long-term family business brings with it significant challenges and forethought. This session will examine some of the options and strategies for this significant estate planning activity, including:

- What does your client really want? Asking the right questions
- Strategies for family consultation, information management and decision-making
- Understanding the pros and cons of:
 - MOU's
 - Family Constitutions
 - Shareholder agreements
- Key issues for family businesses including authority and control, operational management and dispute resolution
- Content and drafting guide to key documents and agreements
- What can go wrong will go wrong - tips for pre-empting problems and risk minimisation planning
- Building in the parachute for when all else fails

Speaker: *Emma Woolley, Partner, Hall & Wilcox, Melbourne*

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: Singling Out Family Members in Estate Planning

No families are the same, and challenging circumstances can impact decisions on estate planning, with parents often feeling the need to treat certain family members differently to others. This session will examine the options and processes for making these decisions and provide a guide to estate planner in preparing water-tight arrangements, including:

- Risks and benefits of specific or special treatment of family members in the estate plan
- When to use trusts for vulnerable family members and what they need to cover
- Key considerations for setting up a protective or special disability trust
- Drafting tips for specific gifts and bequests to family members
- The consequences of exclusion and how to prepare for the fallout
- Strategies for avoiding challenges - how effective is a statement of wishes and what form should it take?
- Should family members be involved at the planning stage and how?
- Recent cases

Speaker: *Patrick Ellwood, Director, Clover Law, Brisbane*

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2 - FRIDAY 24 MARCH 2023

11.15 - 12.00pm

Session 10: The Loan Ranger: Protecting the Bank of Mum and Dad

The pressures on parents to lend or give their adult children money has increased in line with the cost of living, leaving parents vulnerable and children potentially abusive. This session will set out some of the options available for providing loans which safeguard mum and dad and the rest of the family, including:

- Deciding on the appropriate mechanism for loan arrangements
- What are the essential clauses in a formal loan agreement?
- Repayment obligations, security and rights to secure in future
- When is a co-ownership agreement an option?
- Drafting for potential changes in circumstances
- Strategies for protecting the loan from future claims in the event of a relationship breakdown
- Implications and financial consequences of loan arrangements through family trusts
- Updating wills to reflect loans and directions to executors for forgiveness or collection
- Equalising bequests to other children to offset sibling loans
- Recent cases.

Speaker: Nathan Yii, Principal Lawyer, Chartered Tax Advisor and SMSF Specialist Advisor - Nathan Yii Lawyers, Melbourne

12.00 - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: ESTATE PLANNING FOR OLDER CLIENTS

1.10 - 1.55pm

Session 11: Eighty is the new 50: The Impact of "Ageing and Engaging" on Estate Planning

Healthier living and medical technologies have combined to increase life span. At the same time, the added years can bring changes in intimate relationships, increased dependency on family and associated additional cost of living pressures. This session will examine some of the issues that estate planners need to consider, including:

- The impacts and obligations, legal and otherwise, that come with de facto relationships or second marriages
- When does a de facto relationship arise? Is living together a prerequisite?
- Asset protection strategies for "later in life" partnerships
- Red flags for elder abuse and undue influence from adult children
- Age and health discrepancies between partners and the consequences of eventually living apart
- Centrelink and tax consequences of new relationships
- Tips for advising ageing clients in new relationships.

Speaker: Adeline Schiralli, Consulting Principal, Keypoint Law, Sydney

1.55 - 2.05pm Panel Comments and Questions

DAY 2 - FRIDAY 24 MARCH 2023

2.05 - 2.50pm

Session 12: Keeping a Tight Hold of the Reins in Enduring Powers of Attorney

Enduring powers of attorney are an indispensable link in the estate planning chain of documents, yet in practice failures in drafting and abuse of the power can cause untold damage and unforeseen consequences. This session explores why a power of attorney is not a “set and forget” document and what controls need to be put in place to achieve the intended result, including:

- Key decisions in setting up an enduring power of attorney
- Appointments and alternatives - how many attorneys are needed?
- Drafting guide for special conditions, limitations and restrictions
- Attorney misbehaviour cases and examples, including *Mentink v Olsen* [2020] NSWCA 182; *Turner v O'Bryan-Turner* [2022] NSWCA 23
- Challenging attorney's abuse of power - practical and legal considerations
- A practitioner's responsibility for activity by the attorney
- How to minimise risks including conflict of interest and elder abuse
- Recent law reform activity on enduring powers of attorney and proposed reforms.

Speaker: Justine Taylor, Principal Director, Uther Webster & Evans, Sydney

2.50 - 3.00pm Panel Comments and Questions

3.00pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunch on both conference days are included for those attending the face to face conference.

Conference Papers

TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

Lawyers (except WA): 11 CPD units (substantive law).

WA Lawyers: 6 CPD points (substantive law) being the maximum allowable points that can be claimed per event under the LPBWA rules.

Accountants: 11 CPD/training hours.

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference Venue

Crown Melbourne

8 Whiteman Street, Southbank

CROWN ACCOMMODATION OFFER TO DELEGATES

Crown is offering 10% to 15% discount for conference delegates. You can book directly using the Crown Direct website

<https://www.crownhotels.com.au/crown-direct/login>

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

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 - a. "TEN" means Television Education Network Pty Ltd
 - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
 - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
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General – all conferences

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 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
 - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
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Cancellation by You – all conferences

14. Refunds for registration cancellation by you other than under Clause 6(b):
 - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
 - b. Otherwise, no refund.

Governing Law – all conferences

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